(The Master of Ceremony)

Good evening. Ladies and Gentlemen, a warm welcome to you all to this cocktail reception organised by the Office of the Telecommunications Authority (OFTA).

A quick word about tonight's programme: We shall begin with a talk by our honourable speaker, Professor Richard Whish, from London. This will be followed by a short question-and-answer session, when you will be free to exchange ideas with the professor. At about 8 o'clock tonight when the talk concludes, the cocktail reception will resume, and we have arranged more refreshments outside for you. Since the professor is catching his flight home tonight, much as we would like to have him here longer with us, we'd have to make sure that he can be allowed to leave the venue by 8:30.

As you may be well aware, this reception has been organised to mark the closing of an in-house seminar organised by OFTA on the application of competition law and policy to the Hong Kong telecommunications sector. This 5-day in-house seminar actually started last week and today is the last day.

We are very honoured to have invited Professor Richard Whish of King's College, London to conduct the seminar. Now in just about a few minutes, Professor Whish is going to share with you his insights and expert knowledge surrounding competition issues. But before he starts, may we invite Mr Anthony Wong, Director-General of Telecommunications, to say a few words to us. Mr Wong, please.

(Mr Anthony Wong)

Good evening to you all. Ladies and gentlemen, I'm very pleased to see a very good turnout on a function organised by OFTA. We, as the MC has just said, we have conducted an in-house workshop with the help of Professor Whish coming here for the last week. He has spent many many hours in the OFTA office training up staff in OFTA as well as people from the industry.

Competition Law is a very new subject in Hong Kong. Indeed, it is a very new subject in the world. Particularly in Hong Kong, we have not a general competition law environment, and a sector-specific type of regulation has been applied. Telecommunications fortunately or unfortunately is the first sector to experiment this new theory in the legal area as well as the economics area…..

……I'm sure Professor Whish will agree that this field is not only on legal issues but very much also on economic theories as well. Let me not spend so much of your time. I'm sure you want to hear from Professor Whish, not me tonight. If I may, I'll introduce Professor Whish.

Professor Richard Whish has been professor of law at King's College London since 1991. Prior to that, he has been teaching at the University of Bristol and he's a qualified solicitor and was a partner at Watson, Farley and Williams from 89, 1998. He acts as a consultant to a variety of companies and regulatory agencies and as a member of the advisory panel of the Director-General of Fair Trading in the UK…..

……Besides, the professor is also the author or contributor to numerous books on competition law. We've had a 5-day seminar and it's very successfully conducted. And I would like to take this opportunity to allow the audience here to hear from the professor. May I now pass the floor to you, Professor Whish.

(Professor Richard Whish)

Ladies and Gentlemen. Good evening. Thanks you very much to the Director-General for that introduction. I've had an immensely enjoyable time in Hong Kong, I must say. I've been here since last Monday and I've conducted a series of lectures but I've also met many people and we've discussed issues of telecommunications and competition in Hong Kong…..

…...A most interesting week I have had. I wasn't aware that I'd be whisked away at 8:30 precisely. So I have to work out how long to talk for and how long to receive questions and how long to get for myself a glass of wine because I haven't had one yet. So I propose to talk about 30 or 35 minutes or so, which will give time for some questions and comments.

In preparing a talk like this, it's often quite difficult because I'm aware sitting in the room there'll be some people who know a great deal about competition law and policy. And there'll be another group of people who'll know a great deal about telecommunications…..

…..But also I suspect there are some people for whom the whole subject of competition law and policy is really rather new. And when one is unfamiliar with this area it really is quite complicated. And so what I've tried to do is to work out some thoughts and observations which I hope will be of interest to a fairly mixed group of people in terms of their prior experience.

Now early in my teaching career, I was told that an expert is somebody who comes from overseas with transparencies. I have come from overseas and I do have transparencies. So I hope at least I've passed that test. I've got six of these slides. I thought it might be quite interesting just to begin with a brief view of the development of competition law globally before we begin to focus more specifically on Hong Kong and even more specifically, telecommunications in Hong Kong.

(Slide 1)

As the Director-General just said, competition law itself is relatively new. Of course it is the case that in the United States and Canada there have been systems since the late 19th century. The United States will often be heard to say that it had the first system of competition law in the world, 1890, the Sherman Act. Actually, the Canadians did get in there in 1888, and they are very proud to tell you when they have the opportunity. In North America, competition law has fairly deep roots. But elsewhere in the world it's much newer. In Europe we adopted in the Treaty of Rome competition rules in 1957. That came into force in 1962…...

…...But up until the 1990's there were still about 10 serious systems of competition law. So even going back 12 years or so, you wouldn't have found that many competition law regimes. And yet, in the 1990's, you saw an absolute proliferation of systems of competition law around the world. And as I've said on this slide, there are at least 90 competition regimes in place. So obviously a lot of those happened in the late 80s and early 90s onwards.

Of those systems of competition law, not all but many include provisions for the prohibition of mergers that would be seriously detrimental to competitive structure of markets. So about 50 countries have a system whereby a competition authority or minister or competition commission or whatever, in certain circumstances, can prohibit mergers on competition grounds. Some of these cases are extremely controversial, as many of you saw last year, European commission prohibited the merger between General Electric and Honeywell. So we've got about 90 systems, 50 or so include merger control. And the interesting thing is that the systems of competition law that we have exists in all types of economy.

Obviously highly developed and very substantial economies, such as the United States or Canada, have competition regimes. But many of the countries that have emerged from a state-controlled market structure, the former Soviet Union countries, for example, the countries of Central and Eastern Europe. Most of these countries now have adopted competition regimes. So you'll find that Poland, Hungary, Slovenia, Romania and Bulgaria - all these countries do have competition regimes. And also numerous developing countries, with very small economies in some circumstances, have also adopted competition laws. So you can go to Zambia, Zimbabwe, Ghana or Senegal and you will find that there are competition rules.

So frankly you look around the world globally and there are very few patches of the atlas where you do not find systems of competition law. And there are numerous explanations for this. And one could have a debate about why there are so many systems of competition law and to what extent is it because that the IMF and World Bank has required people to adopt competition laws.

But at the bottom you have the very important point at the end there that there is undoubtedly a growing belief in markets. If you think of the great ideological struggle of the 20th century, one of the great ideological struggles was the market as against the state. And the pendulum globally in the last decade, especially in the last century, moved in favour of markets…...

…...Hence one sees de-monopolisation, deregulation, liberalisation, the opening, WTO and all these sorts of phenomena. All of it shows a move towards market-based economies.

And if you're going to have a market-based economy, obviously it raises the question: Do you need competition laws to protect the way in which you hope and expect your market-based economy to function? It's a kind of quid-pro-quo. Yes, we want a free market. So do we want competition laws to insure that the free market delivers the benefits that are hoped for and anticipated? ….Which logically leads onto this slide. Well, in that case why do we have competition law?

(Slide 2)

I want to make one very important point here. I've been to many countries in the world where competition laws were in the process of being developed or at least being discussed or recently been developed. And then the business community and consumer organisations were trying to come to terms with this new law and to ask what should we do with it. And I know that something that sometimes happens is that there is a kind of suspicion of competition law, or even more specifically perhaps, a suspicion of competition authorities because the business sector kind of think to themselves,

"Well! We used to have all these state controls in the form of planning and so on and so forth. And now we're meant to have a free market. And all that's happened is that the old state control mechanisms have gone away and we've put competition law in its place. So it's just as much manipulated as it used to be."

That is a fear that people sometimes have, but I would say that competition law is a tool that should only be used where markets fail. In other words, competition law is not meant to be about heavy regulation, heavy intervention. It's not meant to be that at all. As a general proposition, markets should police themselves. Let's put it this way. If you have a competitive market structure, then it should mean that no particular firm has enough market power to be able to dictate price…...

…….Or to put the same point another way. If you have a competitive market structure, the market should settle what the price is to be. The monopolist is not a price maker. Rather, the market itself makes the price.

According to the conditions of competition, the balance of supply and demand and ultimately, as I've said here, in a competitive market, the consumer decides. That is such a crucial point. That is at the heart of the entire business of competition, that instead of suppliers determining what the price should be, the market which is nothing other than expression of the aggregated interests of consumers. Consumers decide what the market price will be……

……And if this is the market price, some consumers might be prepared to buy goods and services at that price, others might not. But that is their choice. They vote with their money. They vote with their purchases.

So as a general proposition one would hope that one has created markets sufficiently competitive that the competition authority can sit there and do nothing. Competition law is not some sort of way of reintroducing regulation into the market. It's absolutely not that. That's obviously a highly optimistic thing what I have said, that we hope the competitive market is going to yield the right solutions.

The difficulty with that proposition and the reason that you have competition law is that firms may have market power. And if they have market power, then they may be able to abuse it. In some circumstances an individual firm has market power, so it can perhaps raise prices to an excessively high level, or just as possibly, it may reduce prices to an unreasonably low level in order to defeat competitors. Then that firm puts its prices back up. Very difficult to work out when the price is unfairly low or unfairly high. But the idea is a simple one. It may also be that firms get together collectively and agree, for example, to fix prices or to share out customers, or geographically to divide markets.

Well, all of these things are examples of the abuse of market power. So the purpose and the function of competition law is to enable an institution somewhere, be it an individual invested with the powers or a commission or a court, or whoever it should be, possible to come in and correct those situations in which there is a failure of the market because somebody has abused his market power.

So that's why you have competition law. It seems to me, I have to say as a general proposition, that in so far as a country or a society chooses as its instrument of economic policy the free market, it seems to me to be logical to start with the proposition that there ought to be laws in place to ensure that the free market is not abused…...

……So in that sense I feel there should be a presumption in favour of having a competition law and that a government that says it's not necessary should have to prove why one is not necessary. That seems to be the logical starting point about any debate about should one have competition law or not. What is the argument for not having one? I don't think the presumption should be the other way around - why should we have one?

But the last point on that slide simply cannot be overstated too much. Competition law - competition law is for consumers. That is absolutely crucial to the whole understanding of the subject. Competition law isn't there to give government officials power that they can use because it's nice-to-have power……

……And competition law isn't there because competitor A has got a complaint against competitor B and we want to do anything that we can to retrain B and so we have competition laws. Competition law is there to prevent the abuse of market power that will lead to higher prices that ultimately are detrimental to consumers.

Now in thinking about competition law and policy one should always have that very simple idea in mind. If we have this law, it is a law for the benefit of consumers. And I may be overstating it, but I'm only overstating it because people sometimes have fairly fundamental misapprehensions about that. Competition law is not an instrument for the benefit of competitors, it's not an instrument for the benefit of regulators. It's an instrument for the benefit of consumers.

(Slide 3)

So if we have a system of competition law, what are the problems? What are the issues that competition law is basically concerned with? And the answer to that is firstly that any system of competition law will be concerned to ensure that competitors do not come together to fix the market.

There's a very well-known statement of Adam Smith, who was an economist, a Scottish economist in the 18th century who wrote a very famous book "The Wealth of Nations". It was a remarkable book in 1776 because this was the book in which Adam Smith attempted, I think for the first time, really to explain how markets work. And why markets as a general proposition were to the benefit of consumers because they provide choice, they provide lower prices etc.

So you have this wonderful thesis explaining what the benefits of competition were. But there's a very interesting paragraph in the book, in which Adam Smith said in 1776, if you have five people from the same industry and if they meet in a room where nobody else is listening to them, if they are competitors, the chances are that within 10 minutes they will start to discuss each other's prices because those people in the same industry will very often see that their mutual self interest would be to try to fix the market.

If you are a monopolist, you know as an intelligent profit maximising monopolist, that the greatest economic advantage to you will come from suppressing your output and thereby raising prices - an obvious and a simple idea. Well we don't like that. At least the customers of the monopolists don't like that….

……If you have five competitors who meet to discuss their prices and to discuss their output and so on, they may very well realise that it is in their interest to suppress output and to raise price. The OPEC cartel doesn't actually fix price. It actually decides how much oil is produced, and if you suppress the amount of oil available to the world market, the price rises. So there is this phenomenon that in the absence of competition laws, and in the absence of any other kind of constraint, it seems that people within an industry will inevitably find a self interest in meeting to discuss market conditions.

And for that reason the modern focus of competition law globally, and there's absolutely no question about this, the modern focus of competition authorities is tending to be of horizontal agreements between competitors to rig the market. Whether this is by agreeing to fix prices, whether it's by agreeing to share out geographical markets: I will have this market and you will have that market and we will never invade each other's markets. Or whether it is by allocating customers: I will deal with the wholesale sector and you can deal with the retail sector. Or I will deal with hospitals and you will deal with the dental end of the health service market. These are regarded as absolutely fundamentally illegal agreements in systems of competition law.

And actually the issue that one has when confronted with that sort of problem is not whether the agreement is legal or illegal. The issue tends to be: is the competition authority able to obtain evidence to prove that the agreements exist. And also what kind of penalty has to be imposed in order to act as a deterrent to prevent other firms from behaving in this way.

In the United States, if you're party to a price-fixing agreement, the individual officers of the company that were responsible for the cartel can be sent to prison. It's a criminal offence. Two years ago the senior executives of Rote, the pharmaceutical company in Switzerland, had to fly to the United States to serve terms of imprisonment as a part of the settlement of the action against the company.

And in 6 weeks' time, in the UK, we were to introduce a bill into our parliament proposing that horizontal price fixing, market sharing and customer allocation should be criminal under UK law. And so the officers of the company responsible for the behavior in question will be liable to terms of imprisonment. That does rather concentrate the mind. It's one thing – "Will my company be fined?" It's another – "Am I going to miss the next two Christmas with my wife and kids because I'm actually in prison somewhere?"

Possibly sharing a cell with Jeffrey Archer, who of course is in prison at the moment.

So competition law systems are very concerned with horizontal agreements of this kind and it is specifically written into the Telecom Ordinance in Hong Kong. In Section 7K, these three types of agreements are specifically stated to be illegal. Price fixing in telecom markets, market sharing and customer allocation are specifically stated to be unlawful in telecoms in Hong Kong.

The other thing that competition law specifically is concerned with is predatory pricing on the part of a dominant firm, a firm with market power. We could have a long discussion about market power, significant market power and dominance - whether it would be fruitful to discuss that at this stage, I don't know, but they are very difficult issues.

But for a firm with market power to indulge in predatory pricing is normally regarded as unlawful. And the idea of predatory pricing is that here I am in a dominant position in a market, somebody enters my market, or somebody is threatening to enter my market, and I drop my price. Now this is an agonizingly difficult thing for competition authority. Because clearly as a general proposition, if a dominant firm charging high prices reduces its price, one would think this is a ground for congratulation because it means that at last the market is becoming competitive and we've got some price competition, and that's a good thing. Manifestly the competition authority should never punish a firm for competing. That would be the ultimate absurdity.

But what if the new price cut, here is the new entrant, and the price cut is quite severe to the point at which the dominant firm is actually making a loss. It's not simply that it's dropped its price. It is actually making a loss. Presumably for the period that it takes to eliminate the new entrant at which point its price will go back up to perhaps a monopolistic level. Well, I think competition authorities around the world would say that when the pricing is actually below cost, that that is anti-competitive and abusive.

In telecommunications cases, it raises the wonderfully intriguing question well what is "cost" when you are supplying a service over a fixed network which was built a hundred years ago and where the costs have been sunk deeply in the past……

…...What is the relevant cost standard to apply and that is very difficult as to whether to apply short or marginal costs, or average variable costs. Or the instrument often used now in these cases, long run average incremental costs. Perhaps it should be a higher standard - fully distributed costs.

These are difficult issues of great specificity in telecom cases. But nonetheless, despite the complexity of this market, there is such a thing as predatory price fixing and where it is found it will be condemned. Similarly anti-competitive price discrimination. I want to make an important point incidentally…...

……Price discrimination, as a general proposition, I think is a good, rather than a bad thing. One shouldn't have a sort of instinctive feeling that just because a price is discriminatory, it is therefore bad. The discriminatory price might actually be a way in which a firm can simply maximise its output. And there's nothing wrong with a firm maximising its output. On the other hand, if it's indulging in discrimination because it is a way of eliminating a competitor, I could start to draw diagrams explaining that idea. But where the discrimination is anti-competitive in its nature and effect, then there clearly is a case for a dominant firm to be investigated by the competition authority.

Similarly if a dominant firm enters into a deal with a customer or supplier which is exclusive…, "I will supply a service to you on condition that you do not take the same service from anybody else for two years, three years, five years…." Clearly a point in time comes at which that sort of exclusive vertical relationship, a relationship between people operating at different levels of the market, a time comes when competition authorities will be concerned that the exclusivity is having the effect of foreclosing other people's reasonable access to the market.

So what we will find is that systems of competition law typically deal with these two phenomena, horizontal agreements and the abuse of market power. They may have provisions on merger control but as I've said earlier, some systems do, some systems don't. You soon may have that as well.

(Slide 4)

A few more points just on this section.

Terribly important to understand: competition law is not the same as ex ante regulation. I think this is a terribly important point and it may be something worth thinking about quite carefully in a Hong Kong context. That there are many markets where perhaps you've had a state-owned monopoly. You're gradually introducing competition into this market. And it may well be in the early years when there isn't really any effective competition, it may be necessary to have ex ante telecommunications regulatory rules. That is to say the competition authority, sorry, the regulator says: "You must do this" and "You mustn't do that". And you have these detailed ex ante rules setting out in detail what you can and cannot do…...

…..And you have the ex ante regulatory rules almost as a substitute for competition. Almost to act as a kind of discipline upon that company precisely because there isn't any competition.

However, competition law is really rather different. It goes back to my early... earlier slide. When you have a system of competition law, you hope that there is enough competition in the market, that you can just allow everyone to carry on with the horrible, ghastly, bloody business of competition in which they all kill each other. Well, fine. That's competition.

….to describe the perennial gale of creative destruction, which is a very nice way to think about the process of competition. It's people slaughtering each other all the time. Well, that's competition. So the law changes from being a regulatory law to being a competition law.

It's a process that is absolutely clear, for example, in telecommunications in the United Kingdom. And you know, frankly, one day if the market is to become absolutely fully competitive, the regulation just goes away. It evaporates into thin air. And you simply are left with competition. Obviously it's controversial when have you reached that point. But it seems to me that in policy terms, that is actually what one is aiming for. The time when the market is competitive enough that you no longer need a government agency to regulate it because competition does most of what you want to achieve, and competition law is there to perfect or to overcome the abuses of market power.

So that really leads onto the last bullet point there, which is that systems of regulation tend to have rules that just simply say you must not do this. So really it's the question of look at the behaviour, look at the rule and you know the answer "Yes" or "No". Competition law is much more complicated than that. Competition law is going to be about saying – "Has X abused a dominant position?" And that is a question which is essentially about economic analysis. It's asking – "Has firm X got market power?" That requires a definition of what the relevant market is. If it has got market power, has it indulged in the low cost selling which has adversely affected the competitive nature of the market? There is no simple short cut answer in those cases. By its nature it requires a long and sophisticated analysis. So applying competition law intellectually is just a totally different business from applying regulatory rules.

So two more slides focusing more specifically on telecommunications and Hong Kong, but many of the ones I want to make have really been made already.

(Slide 5)

Competition law and telecommunications. Of course this is one of those markets where typically you are going to find, and of course there are variations of this, but you may well have an incumbent monopolist, or near monopolist that may have been state owned and it may now have been privatised. There are lots of different constellations around the world but you are typically going to find that there is an incumbent. So you think to yourself: Well, in so far as we have laws on the abuse of dominance, clearly there is the possibility that the former state-owned telecoms operator has market power.

It does tend to be the case that for the market power in fixed-line telephony example, it does seem to take a long time for the market share there to reduce. It's not for the competition law authority to reduce it, it's up to the consumer to decide whether they want to switch to somebody else. But the reality of the matter is that the market power may remain for a long time.

The next point, vertical integration is a very important point of course because there are some sectors which by their very characteristics involve firms that are vertically integrated. So typically I might own the fixed-line network or the local loop or whatever I may. It may be that there's no substitute for having access to that infrastructure…...

……And at the same time I also offer services which make use of that infrastructure. And the typical situation might be that somebody has market power upstream in the market in relation to the network. They then compete downstream in relation to a service provided over that network, and other people want access to that network. And so a very complicated problem, especially in telecommunications market but it could be the same in electricity, transport or gas or whatever, as you have this vertical integration that might put somebody at an advantage over other competitors. So then the problems that you get are, has there been an abuse, because I've got market power in the "A" market and I've used my power in that market in order to harm somebody in the downstream related market.

So that is a typical problem of telecommunications generally. Obviously it could be a problem that specifically arises in Hong Kong.

Another problem that you do have, and we've had this in Europe, is that you could have a number of competitors….. shall I use mobile telephony as an example, perhaps. Because this has just been referred in the United Kingdom to our competition commission and the problem is that you look at three or four operators and you find that their prices are roughly speaking, the same. And the great problem then for a competition authority, as I've said at the end of the bullet point there, you've got parallel behaviour, people are behaving in the same way. But are they behaving in the same way because they've entered into an agreement?

Or is it just that they are very intelligent people, and I can see what your prices are and you can see what my prices are? So we end up charging the same prices although we never actually agreed to do so. And that is frankly an extremely difficult issue to which there's no clear and obvious answer. It may be that the problem is the structure of the market. It may be you need to do something about a market structure like that to prevent parallelism. Because if they haven't agreed, you can't fine them for doing something when they haven't agreed. It's a very very difficult area of competition policy.

(Slide 6)

And so my concluding slide says – “Well. What about the Hong Kong Ordinance?” And it is fascinating to see where your law has arrived and of course it can be traced back to the original licence conditions about competition. It’s the same thing we did in the United Kingdom incidentally. We started by imposing licence conditions on BT - British Telecommunications - and then in due course, the licence condition went away because we introduced a law to deal with the problems in hand.

So here one has had the licence conditions but they have now rolled over into the Ordinance. You have Section 7K, which deals with anti-competitive practices in particular, the price-fixing agreement, the market-sharing agreement, the customer-allocation agreement is specifically covered by 7K.

And you have 7L, which is the abusive dominance provision and then that specifically talks about predatory pricing, price discrimination, which is detrimental to competition. There's a specific provision in there about tie-ins. I won't go into detail of the law. But clearly, abusive dominance catches that unilateral behavior by a dominant firm, which is going to be harmful to the process of competition in the market.

Note that your rules are overtly, explicitly based on economics. Throughout the rules, the question of whether there will be a substantial lessening of competition, or a substantial restriction of competition is repeated again and again. So to the lawyers I would say here: This is not an area of law where you have hard-and-fast rules that you just apply…...

…….This is an area where you have to understand the economics of the market, and the way of which the market works and the way in which pricing decisions are made. And only at the end of that kind of analysis can you conclude if there's been a competition infringement. So it's very much an economic-based test.

A recent interesting phenomenon is the establishment in Hong Kong of a full appeal to competition, and a Telecommunications Appeal Board, which I think is a very sensible thing to have, actually, because one needs to reassure the business community and consumers of course, that there is some proper mechanisms for ensuring that OFTA's decisions are correct. And I think by having an appeal board, it's a full appeal, it's not a judicial review. Very important point……

……The Appeal Board could substitute its own decision for that of the authority. But such a body has now been created and obviously appeals will begin to come through the system.

The last two points I have said here is that it seems to me frankly that the competition rules that you have in the Telecommunications Ordinance, I should of course mention the Broadcasting Ordinance, the competition rules that you have there seem to me to be philosophically an essential underpinning to these sectors. And these are sectors in which there seems to be a healthy degree of competition and I don't think it's any coincidence that these two things are there. I have wondered whether there'll have to be a merger of the telecommunications and the broadcasting rules in due course and whether there will be a system of merger control to prevent that merger.

In the world of convergence in which we live it becomes increasingly odd actually that we should have a set of telecom rules and a set of broadcasting rules, when it's my media content being delivered over your cable and so on so forth. That's an issue of which you're well aware.

At the end of all of this, my concluding comment is that if one has this healthy, essential underpinning of a healthy competitive sector, of course it does leave me going away contemplating mightn't there be some method for introducing competition law to other sectors of the economy in Hong Kong. But perhaps that's a point in which things became too controversial and therefore I will conclude. So thank you very much.

Slide 1

INTERNATIONAL DEVELOPMENTS

- rapid growth of competition law
- 90+ systems
- 50+ systems of merger control
- in all types of economy
- growing belief in markets

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Slide 2

WHY COMPETITION LAW?

- markets should police themselves
- in a competitive market, no firm can dictate price
- in a competitive market, the consumer decides!!
- but firms may abuse market power
- competition law is for consumers!!

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Slide 3

WHAT PROBLEMS DOES COMPETITION LAW ADDRESS?

- Horizontal agreements
  - price fixing
  - market sharing
  - customer allocation
- Abuse of market power
  - predatory pricing
  - anti-competitive discrimination
  - exclusive agreements

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Slide 4

- Note: Competition law is not the same as ex ante
- Trend is from ex ante regulation to competition
- Competition law is about the economic analysis of markets

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Slide 5

COMPETITION LAW AND TELECOMMUNICATIONS

- Typical position = (Former)(State-owned) incumbent monopolist
- Vertical integration
- Possible abuses – related markets
- Possible parallel behaviour, perhaps without agreement

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Slide 6

HONG KONG ORDINANCE

- S7k – Anti-competitive practices
- S7l – Abuse of dominance
- Economic test
- Full appeal to appeal board
- Essential underpinning of healthy sector
- ? Application to other sectors?

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